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County of San Diego

CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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REGULAR MEETING AGENDA

TUESDAY, October 9, 2012, 5:30 P.M.

San Diego County Administration Center

1600 Pacific Highway, Room 302/303, San Diego, 92101

The public portion of the meeting must be concluded in time to allow the public to vacate the building by 6:00 p.m.

(Free parking is available on the street or pay Ace Parking on the south side. Enter at the north entrance.)

Pursuant to Government Code Section 54954.2 the Citizens' Law Enforcement Review Board will conduct a meeting at the above time and place for the purpose of transacting or discussing business as identified on this agenda. Complainants, subject officers, representatives or any member of the public wishing to address the Board on any of today's agenda items should submit a "Request to Speak" form to the Administrative Secretary prior to the commencement of the meeting.

DISABLED ACCESS TO MEETING

A request for a disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting. Any such request must be made to Ana Becker at (619) 238-6776 at least 24 hours before the meeting.

1. ROLL CALL

2. MINUTES APPROVAL

- a) Minutes of the September 2012 Regular Meeting (*Attachment A*)

3. PRESENTATION / TRAINING

- a) Probation Searches/4th Amendment Waiver Searches: Law Enforcement Perspective.

4. EXECUTIVE OFFICER'S REPORT

- a) Workload Report - Open Complaints/Investigations Report (*Attachment B*)

5. BOARD MEMBER COMMENTS

6. NEW BUSINESS

- a) Board Member Recognition.

-continued on next page-

- b) Nomination for vacancy: Executive Board Secretary.

7. UNFINISHED BUSINESS

- a) Rules Subcommittee Update.
- b) Early Warning System(s) Case Tracking Subcommittee Update.
- c) NACOLE Conference Update.

8. PUBLIC COMMENTS

- a) This is an opportunity for members of the public to address the Board on any subject matter that is within the Board's jurisdiction. Each speaker should complete and submit a "Request to Speak" form to the Administrative Secretary. Each speaker will be limited to three minutes.

9. SHERIFF / PROBATION LIAISON QUERY

10. CLOSED SESSION

- a) **Officer Discipline Recommendation** - Notice pursuant to Government Code Section 54957 for deliberations regarding consideration of subject officer discipline recommendation.
 - 11-090 / Navarro (Sustained – Deputy 2, Deputy 7, Deputy 8, Deputy 9)
- b) **Request for Reconsideration** – Notice pursuant to CLERB Rules & Regulations: 16.9 Reconsideration of Final Report. Upon request by the complainant, subject officer or their representatives, the Final Report may be re-opened for reconsideration by the Review Board provided that: (a) previously unknown relevant evidence is discovered which was not available to the Review Board before it issued its Final Report, and; (b) there is a reasonable likelihood the new evidence will alter the findings and recommendations contained in the Final Report. A Final Report may also be re-opened for reconsideration by the Review Board at the request of the Board of Supervisors or upon initiative of the Review Board when such reconsideration is in the public interest. Every party to the proceeding or their representative(s) shall be notified of any request or proposal for reconsideration and shall be given the opportunity to respond to the Review Board before the request or proposal is acted upon.
 - 11-035 / Capone
- c) **Sheriff Response to Policy Recommendation**
 - 10-022 / Hewitt
- d) **Probation Response to Sustained Finding**
 - 11-062 / Pollack (Sustained – Probation Officer 1)
- e) **Discussion & Consideration of Complaints & Reports:** Pursuant to Government Code Section 54957 to hear complaints or charges brought against Sheriff or Probation employees by a citizen (unless the employee requests a public session). Notice pursuant to Government Code Section 54957 for deliberations regarding consideration of subject officer discipline recommendation (if applicable).

DEFINITION OF FINDINGS	
Sustained	The evidence supports the allegation and the act or conduct was not justified.
Not Sustained	There was <u>insufficient evidence</u> to either prove or disprove the allegation.
Action Justified	The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.
Unfounded	The evidence shows that the alleged act or conduct did not occur.
Summary Dismissal	The Review Board lacks jurisdiction or the complaint clearly lacks merit.

CASES FOR SUMMARY HEARING (10)

ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE

11-105

1. False Report – Deputy 1’s reporting in the death investigation of Rebecca Zahau prevented a thorough and impartial determination.

Recommended Finding: Summary Dismissal

Rationale: The complainant’s alleged facts did not establish a prima facie showing of misconduct by the San Diego County Sheriff’s Department, as such the Review Board does not have jurisdiction over the subject matter of the Complaint.

2. Misconduct/Procedure – Deputy 1 failed to fully release all autopsy information during the September 2, 2011 Press Conference.

Recommended Finding: Summary Dismissal

Rationale: The complainant’s alleged facts did not establish a prima facie showing of misconduct by the San Diego County Sheriff’s Department. The autopsy report was prepared by the San Diego County Medical Examiner’s Office and the September 2, 2011 presentation was conducted by the Deputy Medical Examiner. The Review Board does not have jurisdiction over the subject matter of the Complaint.

11-109

1. False Arrest – Deputy 1 arrested the complainant relying solely on the unverified word of the alleged victim.

Recommended Finding: Action Justified

Rationale: Deputy 1 arrested the complainant for PC 243(a) “Battery on a person” and PC 236 “False Imprisonment” after taking a statement from the victim and observing the physical evidence on her person and at the scene. The victim had two broken finger nails, redness on her back and complained of pain on her right shoulder and lower back area. Deputy 1 also observed a hole in the bedroom wall caused by the impact of the victim hitting the wall, as she had claimed. Pursuant to PC 836: Peace Officer Arrest, Deputy 1 had probable cause to arrest the complainant based on the victim’s statements and the physical evidence observed. Moreover, the victim initiated a citizen’s arrest, pursuant to PC 837, which allows a private person to arrest another for the commission of a public offense in their presence. The evidence shows that the alleged act did occur, but was lawful, justified and proper.

2. Excessive Force – Deputy 3 handcuffed the complainant too tightly, causing him “excruciating pain.”

Recommended Finding: Not Sustained

Rationale: Deputy 3 reported that he was not aware of the complainant’s handcuffs being placed on him too tightly, nor did the complainant inform him of such. Had he done so, Deputy 3 stated that he would have

loosened them, which is his common practice. There are no photos of injuries to the complainant's wrists and therefore insufficient evidence to either prove or disprove the allegation.

3. Illegal Search or Seizure – Deputies 2 and 3 searched and ransacked the complainant's home without a search warrant.

Recommended Finding: Action Justified

Rationale: Unless justified by an exception (consent, incident to arrest, exigent circumstances), a search of private property may lawfully be conducted only if authorized by a search warrant. Deputy 3 was dispatched to the complainant's residence informed that the complainant had allegedly battered his roommate. While in route to the incident location, Deputy 3 was further informed by Sheriff's Communications that the complainant had a firearm located under his couch. Exigency was created by these two pieces of information. Upon arrival on scene and incident to the arrest, the complainant's residence was searched for deputy safety, to locate and secure any firearms present in the home. A firearm was located under the complainant's couch. Deputy 2 did not recall this incident, however Deputy 3 denied ransacking the complainant's home, stating that things were moved around during the search for firearms, but were placed back where they were originally found. The evidence shows that the alleged act did occur, but was lawful, justified and proper.

4. Misconduct/Procedure - Deputy 1 failed to properly Mirandize the complainant when he was taken into custody.

Recommended Finding: Action Justified

Rationale: There is no requirement for mirandizing a suspect solely upon being taken into custody. Miranda warnings are required when a suspect is in custody and being interrogated. Deputy 1 read the complainant his Miranda rights at the station during processing where he stated he understood his rights and was willing to provide a statement. The evidence shows that Deputy 1's conduct was lawful, justified and proper.

5. Misconduct/Procedure – Deputy 1 refused to contact the complainant's daughter upon his arrest.

Recommended Finding: Action Justified

Rationale: There is no requirement to provide a suspect a phone call upon being arrested. Pursuant to Penal Code 851.5, Deputy 1 provided the complainant access to telephones after being booked at San Diego Central Jail, and within the legally required three hour time frame of being arrested. The evidence shows that Deputy 1's conduct was lawful, justified and proper.

11-114

1. False Arrest – Deputy 1 arrested the complainant for felony hit and run.

Recommended Finding: Action Justified

Rationale: Court decisions have determined that probable cause is shown if an officer has knowledge based on "reasonable" trustworthy information that the person arrested has committed a criminal offense, and does not have to be conclusive of guilt, nor exclude the possibility of innocence. Deputy 1 had probable cause for the complainant's arrest for VC§ 20001, Duty to Stop at Scene of Accident, based on witness statements and a witness's positive identification. The evidence shows the arrest was lawful, justified and proper.

2. False Reporting – Deputy 1's police report is in error.

Recommended Finding: Action Justified

Rationale: The complainant offered no evidence to support this allegation and said he had not seen and/or read a copy of the report, but was told that Witness Cyrena Valdez's statement was not included. Deputy 1's Arrest Report did not include witness statements. Another deputy interviewed witness Valdez and documented her statements in a Deputy's Report. Also, a Traffic Collision Report by Deputy 1 referenced statements by the suspect, the victim and 7 witnesses. Deputy 1's reports and his supporting documentation were lawful, justified and proper.

3. Misconduct/Procedure – Deputy 2 failed to protect the bailed out complainant and instead placed him into general population where he was attacked.

Recommended Finding: Not Sustained

Rationale: The complainant was booked on March 3rd at 9:05 p.m. and detained until his bail was posted the following day at 6:23 a.m. After processing paperwork, the complainant was released at 7:55 a.m. The complainant admittedly did not report the attack, but stated the Watch Tower deputies should have seen what occurred. Video surveillance was unavailable for the time period in question and documentation related to the alleged incident did not exist in either JIMS or the Watch Commander's logs. There were no known policy violations related to Inmate Classification and/or Bail Processing, but insufficient evidence to either prove or disprove the alleged attack.

11-121

1. False Arrest – Deputy 1 arrested the complainant based solely on the statements of one witness.

Recommended Finding: Action Justified

Rationale: Deputy 1 arrested the complainant for PC 422 Terrorist Threat, after taking a statement from the victim and observing physical evidence at the scene: a broken bedroom door, which corroborated the victim's statement. Deputy 1 reported that during his contact with the victim, the victim was in obvious fear of the complainant and appeared to truly believe that his life was in danger. During his contact with the complainant, the complainant uttered incoherent statements, preventing Deputy 1 from obtaining a statement regarding the incident. Pursuant to PC 836: Peace Officer Arrest, Deputy 1 had probable cause to arrest the complainant based on the victim's statements and the physical evidence observed at the scene. The evidence shows that the alleged act did occur, but was lawful, justified and proper.

11-132

1. Excessive Force – Deputies 2 and 3 held the complainant's daughter on the ground so that she could be tased.

Recommended Finding: Action Justified

Rationale: Deputies 2 and 3 attempted to handcuff the complainant's daughter because she had strewn glass on the driveway and had broken a front living room window. The complainant's daughter violently resisted deputies' efforts to handcuff her which caused deputies to lose their hold and fall to the ground. The efforts of Deputies 2 and 3 to control the complainant's daughter were unsuccessful resulting in Deputy 1's deployment of the taser. The assaultive behavior of the complainant's daughter necessitated the use of force and was in compliance with the Department Use of Force policy. The evidence showed that the act did occur but was lawful, justified and proper.

2. Excessive Force – Deputy 1 tased the complainant's daughter multiple times.

Recommended Finding: Action Justified

Rationale: Deputy 1 observed Deputy 2 and 3's attempt to handcuff the complainant's daughter and saw that the effort was unsuccessful because of her size and the assaultive behavior. Deputy 1 decided to deploy his taser. In the initial deployment, only one of the two barbs made contact and the taser was ineffective; the second deployment, a drive stun deployment, was also ineffective. The complainant's daughter grabbed hold of the taser requiring deputies to use distraction blows in order to release the taser. The use of force was reasonable and necessary given the assaultive behavior experienced by deputies and was in compliance with the Department Use of Force policy. The evidence showed that Deputy 1's actions were lawful, justified and proper.

3. Excessive Force – Deputy 1 sprayed the complainant with a chemical irritant.

Recommended Finding: Action Justified

Rationale: The complainant stated she was an innocent bystander as deputies tried to take her daughter into custody. She had objected to her daughter being tasered and approached Deputy 1, thus interfering with the deputies, at one point she had grabbed his shirt sleeve. Deputy 1 decided to arrest the complainant for delaying the duties of a peace officer and told her to place her hands behind her back. The complainant refused and walked away. Deputy 1 grabbed hold of the complainant's arm, but was unable to gain compliance and administered one blast of pepper spray because his verbal commands had been ineffective. The evidence showed that the act did occur but was lawful, justified and proper.

4. Excessive Force – Deputy 3 used force twisting the complainant's arm causing injury.

Recommended Finding: Action Justified

Rationale: The complainant stated that she was only trying to protect her daughter while resisting the deputies. Deputy 1's verbal and hands-on controls had proven ineffective and he attempted to use his body weight to gain compliance. Deputy 1, with the assistance of Deputy 3, was able to take the complaint to the ground. Deputy 1 grabbed her right arm and Deputy 3 grabbed her left arm, she was then lifted to her feet. The complainant continued to resist, jerking her left arm from Deputy 3 grip when they heard an audible pop. The complainant became compliant and Deputies 1 and 3 were able to handcuff her. The complainant was issued a citation and released to paramedics for transportation to a local hospital. The evidence showed that the act did occur but was lawful, justified and proper.

5. Excessive Force – Deputy 1 applied handcuffs extremely tight causing injury.

Recommended Finding: Not Sustained

Rationale: The complainant told Deputy 1 that the handcuffs were too tight. He checked the handcuffs for tightness and no adjustments were necessary. There was no documentation to show that the complainant received any injuries after being handcuffed. Absent independent witnesses or video recordings there was insufficient evidence to either prove or disprove the allegation.

6. Excessive Force – Deputies 1 and 3 kicked and/or pushed the complainant as she was placed into a patrol vehicle.

Recommended Finding: Not Sustained

Rationale: Deputies 1 and 3 denied that they kicked and/or pushed the complainant as she was placed in the patrol vehicle. Absent independent witnesses or video recording there was insufficient evidence to either prove or disprove the allegation.

7. False Arrest – Deputy 1 arrested the complainant.

Recommended Finding: Action Justified

Rationale: Every person who willfully resists, delays, or obstructs any public officer, peace officer, or an emergency medical technician, in the discharge or attempt to discharge any duty of his or her office or employment, can be found guilty of a misdemeanor. The complainant's active resistance and assaultive behavior resulted in her arrest for interfering with Deputy 1 in the performance of his duties. Deputy 1's actions were in accordance with Penal Code § 148(a)(1) and department arrest policies and procedures. The complainant was issued a citation and released to paramedics for transportation to a local hospital. The evidence showed that the arrest did occur but was lawful, justified and proper.

12-070

1. Misconduct/Procedure – Deputy 1 accessed the complainant's records.

Recommended Finding: Summary Dismissal

Rationale: The complainant formally withdrew the complaint against Deputy 1 on September 9, 2012. CLERB no longer has authority to investigate this complaint based upon the following CLERB Rules & Regulations: 5.7

Withdrawal of Complaints. A complaint may be withdrawn from further consideration at any time by a written notice of withdrawal signed and dated by the complainant.

12-074

1. Misconduct/Procedure – Deputy 1 used his status as a Law Enforcement Officer to demonstrate his trustworthiness and influence the complainant to leave a deposit.

Recommended Finding: Summary Dismissal

Rationale: Deputy 1 was not on duty status at the time of the alleged incidents, and therefore not within the Review Board's jurisdiction. CLERB does not have authority to investigate this complaint based upon the following CLERB Rules & Regulations: Section 4: Authority, Jurisdiction, Duties, and Responsibilities of Review Board, Section 9: Screening of Complaints, and Section 15: Summary Dismissal.

2. Misconduct/Procedure – Deputy 1 attempted to dissuade the complainant from filing a complaint.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1

3. Misconduct/Intimidation – Deputy 1 used his status as a Law Enforcement Officer to intimidate the complainant from pursuing the return of her deposit.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1

12-075

1. Discrimination/Religious – Deputy 1 failed to provide a Muslim/Halal diet for the complainant.

Recommended Finding: Summary Dismissal

Rationale: The complainant failed to maintain contact with CLERB and attempts to locate and/or reach him by postal mail/telephone have been unsuccessful.

2. Misconduct/Procedure – Deputy 1 has not responded to the complainant's Inmate Requests and Grievances.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Misconduct/Retaliation – Deputy 1, in retaliation for filing a complaint, threatened to make the complainant, "... disappear and placed him in a unit whereby there's only white/Hispanic" inmates.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

12-097

1. Misconduct/Procedure – Deputy 1 towed the complainant's vehicle.

Recommended Finding: Summary Dismissal

Rationale: The complainant was cited and towed by the San Diego Police Department. CLERB does not have authority to investigate this complaint based upon the following CLERB Rules & Regulations: Section 4:

12-107

1. False Arrest – Deputy 1 arrested the aggrieved using marginal evidence.

Recommended Finding: Summary Dismissal

Rationale: The San Diego Police Department was the arresting and towing agency. CLERB does not have authority to investigate this complaint based upon the following CLERB Rules & Regulations: Section 4: Authority, Jurisdiction, Duties, and Responsibilities of Review Board, Section 9: Screening of Complaints, and Section 15: Summary Dismissal.

2. Misconduct/Procedure – Deputy 1 towed the complainant's vehicle, not allowing her to retrieve it and avoid impound costs.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1

End of Report